

Comment Summary and Responses
Comment Deadline: October 18, 2018

Amendment to the Water Quality Control Plan for the Central Coastal Basin to Establish Total Maximum Daily Loads (TMDs) for Nitrogen and Phosphorus Compounds in Streams of the Franklin Creek Watershed, Santa Barbara County, California

List of Commenter's:

Comment Reference	Organization	Representative
1	The Otter Project	Steve Shimek

Response to Comments:

No.	Commenter	Comment	Response
1.1	Mr. Shimek	The commenter disagrees with the use of the Regional Board's Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands, Order R3-2017-0002 (2017 Ag Order), and its successor orders to meet load allocations and achieve the TMDLs. The commenter states that "the Ag Order contains provisions to monitor -- but not limit -- the applications of nitrogen and phosphorus." The commenter further states "the court has determined -- and the appellate court has affirmed -- the Ag Order is insufficient to regulate agricultural discharges."	<p>The TMDLs assign final concentration-based allocations of nitrate, total nitrogen, and total phosphate to be achieved 25 years after the TMDL effective date, with interim load allocations compliance 10 and 15 years after the effective date. Implementation of these TMDLs is through a general order and its successor orders, regulating waste discharges from irrigated agricultural lands in the Central Coast Region. The use of the Central Coast Water Board's Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands, Order R3-2017-0002 (2017 Ag Order) to implement TMDLs is appropriate.</p> <p>The Central Coast Water Board's regulation of waste discharges from irrigated agricultural lands continues to evolve and is informed by the State Water Board and other legal precedents, including the court decision described in the comment, <i>Monterey Coastkeeper v. State Water Resources Control Board</i> issued by the Third District Court of Appeal on September 18, 2018. The case concerns a prior general order that the Central Coast Water Board adopted in 2012 and the State Water Board modified in 2013. Of relevance to the comment, the Court of Appeal concluded that the State Water Board modification to the Central Coast Water Board's 2012 order did not satisfy the Nonpoint Source Policy because the added provision lacked quantifiable milestones and a time schedule.</p>

			<p>While the litigation was pending, the 2013 modified order expired and was replaced by the 2017 Agricultural Order. A provision in the 2017 Ag Order shares language identical to the provision the Court of Appeal held does not satisfy the Nonpoint Source Policy. This language in the 2017 Ag Order will be reevaluated in light of the <i>Monterey Coastkeeper</i> decision. Moreover, future orders, including the order that will replace the 2017 order when it expires in 2020, will be developed in compliance with the principles set forth in the decision and State Water Board precedent.</p> <p>Further, future orders must also incorporate the TMDLs. Water Code section 13263 states that waste discharge requirements shall implement any applicable basin plan amendment and Water Code section 13269 states that the regional water board must determine that a waiver of waste discharge requirements is consistent with any applicable basin plan. The concentration-based interim and final load allocations and the time schedule for attainment of those load allocations, which will be incorporated into future orders consistent with these statutory directives, constitute the quantifiable milestones and specific time schedules required by the Nonpoint Source Policy.</p>
--	--	--	--